

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.C., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.N.C.,

Defendant and Respondent;

A.C.,

Appellant.

D061427

(Super. Ct. No. J511832E)

APPEAL from an order of the Superior Court of San Diego County, David B.  
Oberholzer, Judge. Affirmed.

Minor A.C. appeals an order entered at the dispositional hearing in her juvenile  
dependency case. A.C. contends the court erred by ordering her placed with her mother,  
A.N.C. We affirm.

## BACKGROUND

Before A.C. was born, the San Diego County Health and Human Services Agency (the Agency) and the juvenile dependency court intervened to protect A.N.C.'s four older children. The first case opened in March 1997, because A.N.C. tested positive for PCP, barbiturates and THC, and was not providing necessities for her oldest child, M.C., who was born in 1992. A.N.C. was offered family maintenance services and the case was closed in April 1998.

Through 2006, there were numerous child welfare referrals for M.C. and for A.N.C.'s three other children, N.C., born in 1998; Shane C., born in 2003; and Ali C., born in 2006. The referrals included reports of A.N.C.'s emotional abuse and neglect of the children, substance abuse and domestic violence.

A.N.C. has a history of severe domestic violence with multiple partners. From 1995 to November 2010, L.B., the father of Shane and N.C., inflicted violence on A.N.C. many times. In August 2005 L.B. struck A.N.C. on the head with a license plate in the presence of Shane and N.C. That month, A.N.C. began dating James A., the father of Ali and A.C. In 2006 James began inflicting violence on A.N.C. In September he struck her in the presence of one of her children. In October the Agency opened dependency cases for M.C., Shane, N.C. and Ali. A.N.C. received reunification services, including a 12-week domestic violence course, therapy and a substance abuse program.

In 2008 A.N.C. fled to Alabama with M.C., Shane, N.C. and Ali. Social workers retrieved the four children and in July the court terminated A.N.C.'s services. The court's jurisdiction over Shane and N.C. ended in August, and they were placed with L.B. In

October, A.N.C. married L.B. In June 2009 she called the police twice with reports of his violence. A.N.C. separated from L.B. and applied for a restraining order, but resumed living with him in July. In May 2010 Ali was adopted. M.C. remained a juvenile court dependent, and was eventually given another permanent plan living arrangement.

In November 2010 L.B. hit and punched A.N.C. and tried to stab her with a screwdriver. L.B. kicked N.C., threw him to the ground and stomped on him. Dependency cases were opened for N.C., M.C. and Shane. A.N.C. obtained a restraining order protecting her from L.B. In December, A.N.C. resumed her relationship with James, who had not completed court-ordered domestic violence treatment.

In February 2011 A.N.C. completed a parenting course. In June she completed a 12-week domestic violence course. In August she began a new program that included substance abuse treatment, drug testing, parenting education, domestic violence and anger management classes and therapy. These services were part of her reunification plan in N.C.'s and Shane's dependency cases.

In October 2011 the Agency filed a dependency petition for newborn A.C. The petition alleged A.N.C. and James had a history of domestic violence dating from 2006. Their violent confrontations had prevented their reunification with four other children. A.N.C. and James had not completed domestic violence treatment successfully. They continued living together. At the February 2012 dispositional hearing, the petition was amended to include a summary of the events of February 2, discussed below.

A.C. was detained in a foster home. A.N.C. was still participating in reunification services in Shane's and N.C.'s dependency cases. A.N.C. had completed a substance

abuse program and said she had been sober since October 2006. She was employed as a corporate security officer.

In November or December 2011, A.N.C. moved out of James's home. In a report written on February 1, 2012, the Agency stated "the original protective issue . . . has been mitigated" and recommended A.C. be returned to A.N.C. with family maintenance services, and James remain out of the home until he completed a 52-week domestic violence course and a parenting course.

After moving out of James's home, A.N.C. continued to see him once or twice a week. On February 2, 2012, at 5:00 or 6:00 p.m., she went to his apartment. At 10:45 p.m. the police were called to James's home. Police officers found A.N.C. holding a bloody towel to her face. She said she had been in bed with James, her boyfriend, when he began talking to a girl on the telephone. A.N.C. tried to grab the phone; James pulled her hand away; A.N.C. tried to grab the phone again. James grabbed her by the throat and pushed her into the wall, banging her head. A.N.C. pulled James's hand from her neck and tried to grab the phone again; James punched her in the face; A.N.C. stumbled and James punched her in the nose. A.N.C. went outside and called 911.

The police officers arrested James.<sup>1</sup> A.N.C. went to the hospital and received treatment for nasal fractures. She was released from the hospital the next morning and immediately completed an intake interview for "safe housing."

---

<sup>1</sup> Citing the police report, A.C.'s appellate counsel claims A.N.C. told the police she and James had "been living together for approximately one year." The police report states A.N.C. and James had "been living together for approximately one year," but does

On February 3, 2012, A.N.C. told a police detective "she did not want [James] to be prosecuted and she was not willing to cooperate with the court process." The same day, A.N.C. called the social worker and reported, "last night I was in an altercation with [James] and I received a broken nose due to him being intoxicated with alcohol and weed." A.N.C. explained she had gone to James's home because his friend was fixing her car and she wanted to know when the repairs would be completed.<sup>2</sup> A.N.C. told the social worker "she understood now what [the social worker] meant regarding being concerned for [A.N.C.] and [A.C.] given that [James] has not enrolled in any treatment program." A.N.C. said she was living in a safe house, and once she had been there for 28 days, she would transfer to transitional living.

On February 7, 2012, A.N.C. obtained a temporary restraining order (TRO) protecting herself and A.C. from James. A hearing on the TRO was set for February 22. On February 9, the Agency recommended A.C. be returned to A.N.C., with family maintenance services, as long as A.N.C. resided in a safe house or transitional living. At the February 16 jurisdictional and dispositional hearing, the court made a true finding on the amended petition. We summarize the dispositional phase of the hearing below.

#### A.N.C.'S TESTIMONY

A.N.C. had been living in a "safe location" for "over a week." She would be able to stay there for one year and was prepared for A.C. to join her.

---

not attribute the statement to A.N.C. A.N.C. referred to the bedroom where the violence occurred as "our room."

<sup>2</sup> A.N.C. did not mention car repairs to the police officers or the detective.

Until February 2, 2012, there had been no violent incidents with James since September 2006, and A.N.C. had not believed there was a risk of further violence. She had not been afraid of James when she moved out of his home in late 2011, but she was afraid of him now. The February 2, 2012, incident was "a wake-up call." A.N.C. no longer considered James a boyfriend and was not speaking to him. He was "not who [she] thought he was." She was "a bad judge of men" and should "be alone." With hindsight, A.N.C. saw the truth and the risk of violence, and acknowledged the social worker had been correct to urge her to live apart from James.

A.N.C. was attending a domestic violence program and therapy and had created a safety plan.<sup>3</sup> She was sober and had a sponsor and a support system. Her services had made her "aware of a lot of things." A.N.C. saw "what was wrong" and her responsibility for it. She did not believe James presented a risk of physical harm to A.C., but realized children were affected emotionally when parents fought. A.N.C. had seen this with her older children, who acted out.

In the past, A.N.C. had been financially dependent on L.B. and James. She was now employed and self-supporting. In the past, she had been so lacking self-esteem that she "put up with" anything. Her self-esteem had increased dramatically, and she had matured and stabilized.

---

<sup>3</sup> In addition to the restraining orders A.N.C. had obtained, the elements of her plan were to stay in a confidential, safe location and request that James's visits take place at a visitation center. If James or L.B. violated a restraining order, she would call the police.

## THE DISPOSITIONAL FINDINGS AND ORDERS

Over the objection of A.C.'s counsel, the court followed the Agency's dispositional recommendation. The court made the following factual findings.

A.N.C. exercised poor judgment on February 2, 2012, and she should have known better after participating in a domestic violence course. She had a pattern of going from one abusive relationship to another, without enforcing restraining orders and assisting in the prosecution of the perpetrators. The Agency had not explained why it would be safe to place A.C. with A.N.C. It was "easy to say the right things," and A.N.C.'s testimony was appropriate. In view of her injuries, "one would think that [she] would still be a true believer. Is she going to be a true believer in six, eight weeks, we don't know." A.N.C.'s safety plan was inadequate. Planning to call the police was useless if she did not have access to a telephone, and she needed a plan to keep her location confidential.

A.N.C. "appeared to be sincere, the way she testified, and that she genuinely has decided that this is a watershed moment where she's going to change her ways." She had a confidential home, a vehicle, a job and "a . . . sense of . . . confidence." Balancing the past against A.N.C.'s testimony and recent actions, removing A.C. would be appropriate by a preponderance of the evidence. The court could not make that finding by clear and convincing evidence, however. Thus, the court ordered A.C. returned to A.N.C. The court ordered supervised visitation for James and set a six-month review hearing for August 14, 2012.

## DISCUSSION

At the dispositional hearing, the court was required to return A.C. to A.N.C. unless it found, by clear and convincing evidence, "[t]here is or would be a substantial danger to [A.C.'s] physical health, safety, protection, or physical or emotional well-being" and there were no reasonable alternative means of protecting her physical health. (Welf. & Inst. Code, § 361, subd. (c)(1).) The court was entitled to consider A.N.C.'s past conduct and current situation and determine whether she had progressed sufficiently to eliminate any risk to A.C. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; cf. *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1221.)

We apply the substantial evidence standard of review. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) " 'The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.' [Citations.]" [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' [Citation.]" (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.)



As the appellant, A.C. has the burden of showing substantial evidence does not support the order. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.) She has not met this burden. A.C. contends there was "just a scintilla of evidence" she was not at risk; "the inference drawn from this evidence is based almost entirely on speculation[;] and no other reasonable trier of fact could reach the same decision . . . ." Although we agree the evidence supporting the trial court's decision is far less persuasive than the evidence supporting removal, and although we might have come to a different conclusion had we been the trier of fact, we are required to view the record most favorably to the order. Applying that standard, we cannot say the juvenile court's decision was "supported by a mere scintilla of evidence," or the court's "inferences [were] the result of mere speculation or conjecture . . . ." (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393, italics omitted.)

"[V]iolence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [father's pattern of domestic violence, denial and minimization and experts' reports constituted substantial evidence supporting removal order].) The juvenile court here did not discount this principle. It viewed A.N.C.'s testimony with some skepticism, but concluded she was a credible witness. Because we are required to accept this credibility finding (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228), we accept as true A.N.C.'s testimony she was engaged in services, sober, self-supporting, and living independently in a safe location. Her self-esteem had increased and she had a support system. She

finally realized the danger James presented, the part she played in the cycle of domestic violence, and the adverse effect of the violence on children. She was determined not to repeat her past mistakes.

A.C. acknowledges the issue is "whether the undisputed evidence compelled a finding that removal was required." Under well-established standards of review, we conclude the answer is no and affirm the dispositional order. We note the six-month review hearing is scheduled for August 14, 2012, at which time current circumstances will be assessed for the purpose of making future placement decisions for A.C.

#### DISPOSITION

The order is affirmed.

McDONALD, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.